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AMENDED IN SENATE JUNE 21, 2004

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CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1667

Introduced by Assembly Member Kehoe
(Principal coauthor: Assembly Member Pavley)

(Principal coauthor: Senator Escutia)

(Coauthors: Assembly Members Corbett, Frommer, Goldberg,
Koretz, La Suer, Nakano, Oropeza, Parra, Reyes, and Spitzer)

(Coauthors: Senators Machado, Margett, and Ortiz)

February 21, 2003

An act to amend Section 803 of, to add Sections 801.1, and ~~803.5~~
803.6 to, and to repeal Section 805.5 of, the Penal Code, relating to
criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1667, as amended, Kehoe. Criminal procedure.

Existing law establishes various statutes of limitations for various offenses. Certain provisions of existing law extend the statutes of limitations for certain sex offenses, and revive, for purposes of prosecution, certain offenses for which the statute of limitations had expired. The provisions reviving expired statutes of limitations have been held by the United States Supreme Court to be unconstitutional.

This bill would repeal those provisions of law that have been held to be unconstitutional. It would reorganize certain provisions relating to limitations on filing criminal charges. *The bill would generally provide for a 10-year statute of limitations for felony sex offenses that subject the defendant to sex offender registration.* This bill would also provide that in regard to the statutes of limitations for certain sex offenses alleged to have been committed when the victim was under 18 years of age, prosecution may be commenced within one year of a report to law enforcement ~~made prior to the victim's 30th birthday~~ with specified corroboration, or within one year of a report made at any age with a greater level of corroboration, as provided.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 801.1 is added to the Penal Code, to
2 read:

3 801.1. ~~Prosecution~~ *Notwithstanding any other limitation of*
4 *time described in this chapter, prosecution* for a felony offense
5 described in subparagraph (A) of paragraph (2) of subdivision (a)
6 of Section 290 shall be commenced within 10 years after
7 commission of the offense.

8 SEC. 2. Section 803 of the Penal Code is amended to read:

9 803. (a) Except as provided in this section, a limitation of
10 time prescribed in this chapter is not tolled or extended for any
11 reason.

12 (b) No time during which prosecution of the same person for
13 the same conduct is pending in a court of this state is a part of a
14 limitation of time prescribed in this chapter.

15 (c) A limitation of time prescribed in this chapter does not
16 commence to run until the discovery of an offense described in this
17 subdivision. This subdivision applies to an offense punishable by
18 imprisonment in the state prison, a material element of which is
19 fraud or breach of a fiduciary obligation, the commission of the
20 crimes of theft or embezzlement upon an elder or dependent adult,
21 or the basis of which is misconduct in office by a public officer,
22 employee, or appointee, including, but not limited to, the
23 following offenses:



1 (1) Grand theft of any type, forgery, falsification of public
2 records, or acceptance of a bribe by a public official or a public
3 employee.

4 (2) A violation of Section 72, 118, 118a, 132, or 134.

5 (3) A violation of Section 25540, of any type, or Section 25541
6 of the Corporations Code.

7 (4) A violation of Section 1090 or 27443 of the Government
8 Code.

9 (5) Felony welfare fraud or Medi-Cal fraud in violation of
10 Section 11483 or 14107 of the Welfare and Institutions Code.

11 (6) Felony insurance fraud in violation of Section 548 or 550
12 of this code or former Section 1871.1, or Section 1871.4, of the
13 Insurance Code.

14 (7) A violation of Section 580, 581, 582, 583, or 584 of the
15 Business and Professions Code.

16 (8) A violation of Section 22430 of the Business and
17 Professions Code.

18 (9) A violation of Section 10690 of the Health and Safety Code.

19 (10) A violation of Section 529a.

20 (11) A violation of subdivision (d) or (e) of Section 368.

21 (d) If the defendant is out of the state when or after the offense
22 is committed, the prosecution may be commenced as provided in
23 Section 804 within the limitations of time prescribed by this
24 chapter, and no time up to a maximum of three years during which
25 the defendant is not within the state shall be a part of those
26 limitations.

27 (e) A limitation of time prescribed in this chapter does not
28 commence to run until the offense has been discovered, or could
29 have reasonably been discovered, with regard to offenses under
30 Division 7 (commencing with Section 13000) of the Water Code,
31 under Chapter 6.5 (commencing with Section 25100) of, Chapter
32 6.7 (commencing with Section 25280) of, or Chapter 6.8
33 (commencing with Section 25300) of, Division 20 of, or Part 4
34 (commencing with Section 41500) of Division 26 of, the Health
35 and Safety Code, or under Section 386, or offenses under Chapter
36 5 (commencing with Section 2000) of Division 2 of, Chapter 9
37 (commencing with Section 4000) of Division 2 of, Section 6126
38 of, Chapter 10 (commencing with Section 7301) of Division 3 of,
39 or Chapter 19.5 (commencing with Section 22440) of Division 8
40 of, the Business and Professions Code.

(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child under 18 years of age that the child is a victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) For purposes of this subdivision, a “responsible adult” or “agency” means a person or agency required to report pursuant to Section 11166. This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800, 801, or 801.1, *whichever is later*, has expired.

(B) The defendant has committed at least one violation of Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same victim within the limitation period specified for that crime in Section 800, 801, or 801.1.

~~(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person under the age of 30 alleging that he or she, while under 18 years of age, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.~~

~~(2) This subdivision applies only if both of the following occur:~~

~~(A) The limitation period specified in Section 800, 801, or 801.1 has expired.~~

~~(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual, and the victim’s allegation is corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense. No evidence may be used to corroborate the victim’s allegation that otherwise would be inadmissible during trial.~~

~~(h)–~~

(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) This subdivision applies only if ~~both~~ *all* of the following occur:

(A) The limitation period specified in Section 800 , 801, or 801.1, *whichever is later*, has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual, ~~and there~~.

~~(C) There is independent evidence that—clearly—and convincingly corroborates the victim’s allegation. No~~

(3) (A) *No* evidence may be used to corroborate the victim’s allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(B) (i) *If the victim was under 21 years of age at the time of the report, the evidence corroborating the victim’s allegation shall be established by a preponderance of the evidence.*

(ii) *If the victim was 21 years of age or older at the time of the report, the evidence corroborating the victim’s allegation shall be established by clear and convincing evidence.*

~~(i)—~~

(h) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing, if both of the following conditions are met:

(A) The crime is one that is described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290.

(B) The offense was committed prior to January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004, or the offense was committed on or after January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.

(2) For purposes of this section, “DNA” means deoxyribonucleic acid.

~~(j)—~~

(i) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, *People v. Superior Court (Bauman & Rose)* (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to

1 claims of evidentiary privilege or attorney work product, the
2 limitation of time prescribed in this chapter shall be tolled from the
3 time of the seizure until final disclosure of the evidence to the
4 prosecuting authority. Nothing in this section otherwise affects the
5 definition or applicability of any evidentiary privilege or attorney
6 work product.

7 ~~(k)~~—

8 (j) (1) In a criminal investigation involving child sexual abuse
9 as described in subdivision (f), (g), or (h), when the limitations
10 period set forth therein has not expired, that period shall be tolled
11 from the time a party initiates litigation challenging a grand jury
12 subpoena until the end of that litigation, including any associated
13 writ or appellate proceeding, or until the final disclosure of
14 evidence to the investigating or prosecuting agency, if that
15 disclosure is ordered pursuant to the subpoena after the litigation.

16 (2) Nothing in this subdivision affects the definition or
17 applicability of any evidentiary privilege.

18 (3) This subdivision shall not apply where a court finds that the
19 grand jury subpoena was issued or caused to be issued in bad faith.

20 ~~(l)~~—

21 (k) As used in ~~this chapter~~ subdivisions (f) and (g), Section
22 289.5 refers to the statute enacted by Chapter 293 of the Statutes
23 of 1991 relating to penetration by an unknown object.

24 SEC. 3. Section ~~803.5~~ 803.6 is added to the Penal Code, to
25 read:

26 ~~803.5.~~—

27 803.6. (a) If more than one time period described in this
28 chapter applies, the time for commencing an action shall be
29 governed by that period that expires the latest in time.

30 (b) Any change in the time period for the commencement of
31 prosecution described in this chapter applies to any crime if
32 prosecution for the crime was not barred on the effective date of
33 the change by the statute of limitations in effect immediately prior
34 to the effective date of the change.

35 (c) This section is declaratory of existing law.

36 SEC. 4. Section 805.5 of the Penal Code is repealed.